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Sherwin-Williams Sues Motley Rice Over Secret Docs

By **Jessica Dye**

Law360, New York (April 07, 2009) -- The Sherwin-Williams Co. has leveled charges against counsel for several opponents in past lead-paint lawsuits, claiming attorneys for the Rhode Island attorney general and others illegally obtained and used stolen copies of PowerPoint documents detailing the paint manufacturers' fight against lead-paint litigation.

Sherwin-Williams filed a complaint against South Carolina law firm Motley Rice LLP in an Ohio county court on April 3, alleging that Motley Rice had possession of the sensitive, confidential information from a 2004 board of directors meeting and demanding that Motley Rice stop using and turn over the documents immediately, along with details about how the information was obtained.

In the complaint, Sherwin-Williams claims that the slides were created by its associate general counsel in order to update the company's board of directors on costs of lead paint and pigment litigation, possible insurance coverage for the liability, and other sensitive information pertaining to possible settlements in dozens of public-nuisance and private lawsuits.

Sherwin-Williams contends that Motley Rice presented the confidential slides in a 2008 memorandum opposing Sherwin-Williams' attorneys motion for costs, filed with the Rhode Island Superior Court during a public-nuisance suit brought in 2004 by the Rhode Island attorney general and argued by Motley Rice.

In the complaint, the company argued that it had not even let investors take home the slide documents, let alone anyone outside the company, and had not previously published the documents in any legal or public forum.

According to Sherwin-Williams, one of its former employees, an unidentified John Doe responsible for preparing the purloined documents — who was also named as a defendant in the suit — secretly met with Motley Rice partner Fidelma Fitzpatrick in Cleveland Hopkins Airport in 2006, while Motley Rice was allegedly soliciting Ohio cities to bring nuisance suits against Sherwin-Williams and other paint manufacturers.

The source of the documents, according to Sherwin-Williams' report, was a 34-page fax sent on Sept. 12, 2006, from a FedExKinko's in Akron, Ohio.

The report could not identify the recipient of the fax, nor the sender's identity. However, it said the documents — which also included confidential and proprietary information about litigation and business strategies, potential mergers and retail partnerships and financial information — were still in Motley Rice's possession.

Motley Rice has acknowledged its receipt of the documents and their confidential nature but has thus far refused to return them, according to the complaint.

Fitzpatrick denied Sherwin-Williams' accusations, saying that the firm's attorneys were trying to find a more favorable decision for the case in Ohio after a judge in the Rhode Island litigation failed to issue a requested protective order for the same documents in the memorandum.

"When they didn't get the decision they wanted out of Rhode Island, they had the nerve to turn around and file the same action in Ohio," Fitzpatrick said.

"To say it is misleading is the understatement," Fitzpatrick said. "It shows the unprofessional actions of their law firm."

On March 25, Judge Michael Silverstein of the Rhode Island Superior Court authorized the state to conduct a limited inquiry regarding the origin on the slides in response to Sherwin-Williams' motion for a protective order dismissing them from the case altogether.

Since 1999, Motley Rice has represented the Rhode Island attorney general in a dismissed public-nuisance suit against makers of lead-based architectural paints, including Sherwin-Williams, and has also been retained by local governments in California, New Jersey and Ohio to prosecute similar public-nuisance suits, according to the complaint.

Motley Rice also served as legal counsel for dozens of individual plaintiffs suing Sherwin-Williams over alleged personal injuries from lead-based paints, and between September 2006 and July 2008 represented almost a dozen Ohio cities, including Akron, Cincinnati and Columbus, in "ultimately unsuccessful" Sherwin-Williams-related cases, the complaint claims.

"Through the public nuisance and personal injury litigation against Sherwin-Williams and others, Motley Rice was and still is attempting to gain millions of dollars in fees for itself," according to the complaint.

Sherwin-Williams is seeking more than \$25,000 in punitive damages, costs and court fees,

as well as a return of the documents and an order barring Motley Rice from using them in court.

The company is also seeking damages from former employees, named only as John Doe, on charges of aiding and abetting tortious conduct, in connection with the release of the documents.

Dale Leibach, a communications representative for Prism Public Affairs, said on behalf of Sherwin-Williams that the company would let the filing speak for itself.

Sherwin-Williams is represented by Jones Day.

The case is The Sherwin Williams Co. v. Motley Rice LLC and John Does, case number 09-689237, in the Court of Common Pleas, Cuyahoga County, Ohio.

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